

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

DERRICK BRYANT,	:	Case No. 1:13-cv-803
	:	
Petitioner,	:	Judge Timothy S. Black
	:	Magistrate Judge Karen L. Litkovitz
vs.	:	
	:	
WARDEN, CHILLICOTHE	:	
CORRECTIONAL INSTITUTION,	:	
	:	
Respondent.	:	

**DECISION AND ENTRY
ADOPTING THE REPORT AND RECOMMENDATIONS
OF THE UNITED STATES MAGISTRATE JUDGE (Doc. 30)**

This case is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Karen L. Litkovitz. Pursuant to such reference, the Magistrate Judge reviewed the pleadings filed with this Court and, on July 8, 2016, submitted a Report and Recommendation. (Doc. 30). Plaintiff filed objections. (Doc. 32).¹

As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Report and Recommendations should be and is hereby adopted in its entirety.

¹ In his objections, Petitioner essentially argues that he is not presenting a new claim. (Doc. 32). Petitioner's argument is not well-taken for the reasons stated in the Magistrate Judge's Report and Recommendations. (Doc. 30 at 6).

Accordingly:

- (1) Petitioner's Rule 60(b) motion for relief from final judgment (Doc. 28) is **DENIED**;
- (2) A certificate of appealability will not issue because Petitioner has not shown under the first prong of the applicable two part standard that "jurists of reason" would find it debatable whether this Court is correct in its procedural ruling *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000);
- (3) With respect to Petitioner's amended motion for relief from judgment (Doc. 29), this Court lacks jurisdiction in this matter involving a successive habeas petition within the meaning of 28 U.S.C. § 2244(b). Therefore, the amended motion for relief from judgment (Doc. 29) is **TRANSFERRED** to the United States Court of Appeals for the Sixth Circuit for review and determination whether the district court should be granted authorization to entertain the motion as a habeas corpus petition; and
- (4) This Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Order would not be taken in "good faith" and therefore Petitioner is **DENIED** leave to appeal *in forma pauperis*.

IT IS SO ORDERED.

Date: 8/30/16

Timothy S. Black
Timothy S. Black
United States District Judge